



STATE OF WASHINGTON
OFFICE OF THE STATE HUMAN RESOURCES DIRECTOR

DIRECTOR'S REVIEW PROGRAM

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August 24, 2012

TO: Teresa Parsons, SPHR
Director's Review Program Supervisor

FROM: Kris Brophy, SPHR
Director's Review Investigator

SUBJECT: David McBride v. Department of Health (DOH)
Allocation Review Request ALLO-12-001

Director's Determination

As the Director's designee, I carefully considered all of the documentation in the file, including the exhibits presented during the Director's review conference and the verbal comments provided by both parties. Based on my review and analysis of Mr. McBride's assigned duties and responsibilities, I conclude his position is properly allocated to the Toxicologist 2 (Tox 2) classification.

Background

On November 23, 2011, DOH Human Resources (DOH-HR) received Mr. McBride's Position Review Request (PRR) form, requesting that his position be reallocated to the Toxicologist 3 classification (Exhibit A-3).

Ms. Lou Owen, DOH-HR conducted a position review and by letter dated December 8, 2011, notified Mr. McBride that his position was properly allocated to the Tox 2 classification (Exhibit A-5).

On January 6, 2012, the Office of State Human Resources Director received Mr. McBride's request for a Director's review of ESD's allocation determination (Exhibit A-1).

On July 26, 2012, I conducted a Director's review telephone conference. Present for the conference were David McBride, Nancy Napolilli, Office Director, and Lou Owen, HR Consultant, DOH.

Rationale for Director's Determination

The purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a measurement of the volume of work performed, nor an evaluation of the expertise with which that work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the

available classification specifications. This review results in a determination of the class that best describes the overall duties and responsibilities of the position. Liddle-Stamper v. Washington State University, PAB Case No. 3722-A2 (1994).

Duties and Responsibilities

Mr. McBride is the lead toxicologist for the fish advisory program within DOH's Office of Environmental Health, Safety, and Toxicology (OEHST). He provides primary toxicological support, consultation, and evaluation to that program. Mr. McBride evaluates fish contaminate data and issues fish advisories; conducts health assessments and communicates results to departmental and other personnel, staff and others; develops health advisories; and represents the fish program in study groups, interagency meetings, workshops, committees and the public.

Mr. McBride's duties and responsibilities are summarized from the PRR (Exhibit A-3) as follows:

- 30% I serve as the lead toxicologist for the department's fish advisory program that I began in 2000. I plan, coordinate, implement, and evaluate activities related to fish contamination. I conduct assessment on fish contaminant data to determine whether a fish advisory is warranted. I provide guidance to the site assessment program on fish related issues. I serve on various local, state, and national workgroups and committees to public health and contaminated fish.
- 20% I serve independently as the principle investigator for human health toxicological assessments supporting broad agency or programmatic goals and objectives and the development of major science policy on public health issues resulting from human exposure to environmental contaminants. I provide technical assistance on on-routine human toxicological issues impacting multiple areas of the department and/or other agencies. I have been involved in developing standards where none currently exist.
- 20% I routinely evaluate toxicology research literature for relevance to program needs. I prepare or am responsible for the preparation of guidance documents based on the results of independently conducted or directed toxicological assessment activities. I represent DOH on state and/or national workgroups and committees focused on the interpretation of technical findings and the development of public health policies concerning human exposure to environmental contaminants.
- 15% I have designed, implemented, presented, and defended toxicological assessment findings and conclusions before technical peers and policy makers. I serve as a spokesperson for public health issues for the office and DOH routinely and in urgent response situations. I have provided technical assistance to lower level toxicologists on public health issues which are non-routine or which are based on inconclusive data.
- 5% I collaborate with internal and external partners on major toxicological assessment activities that support state or national public health policy development.
- 5% I raise issues of public health import independently and as spokesperson for toxicology group as requested to supervisor and to DOH management.

- 5% I articulate broad public health/toxicological issues on behalf of the Office and DOH and act as spokesperson in interaction with other offices, agencies and the public and the press.

Mr. McBride's supervisor, Ms. Nancy Napolilli, is the Director for OHEST. Ms. Napolilli provided direct supervision to Mr. McBride during the time period relevant to this review. The WMS 2 Section Manager position that normally supervises Mr. McBride's position had been vacant for seven months. Ms. Napolilli completed the supervisor's section of the PRR (Exhibit A-4), and she disagrees with portions of Mr. McBride's description of duties.

Ms. Napolilli states Mr. McBride is performing Tox 2 level duties the majority of the time and is appropriately classified as a Tox 2. She states Mr. McBride has considerable technical expertise in evaluating fish contaminant data and determining fish consumption rates, and he functions as a technical specialist/lead in the one person Fish Advisory Program.

Ms. Napolilli disagrees with portions of Mr. McBride's comments in the PRR's "Position Purpose." In her comments, Ms. Napolilli indicates Mr. McBride's work is predominately in the Fish Advisory Program. However, she acknowledges he is sometimes requested to address other toxicological issues or projects and may communicate results to a wide variety of stakeholders, develop prevention messaging, and make strategic or policy recommendations to upper management. She indicates he does provide technical assistance to lower level toxicologists upon request regarding fish contamination issues. She states that he develops health advisories and represents the agency in study groups for work associated with the Fish Advisory Program.

With regard to the PRR "Work Activities" section, Ms. Napolilli states that in his capacity as a fish contamination technical specialist/lead, Mr. McBride represents the agency on state and national workgroups and committees focused on the interpretation of technical findings and the development of public health policies. However, she states that he has not been delegated by the agency to serve as a principal investigator for human health toxicological assessments or the development of major science policy. She also indicates that Mr. McBride does not routinely act as the spokesperson for the office and DOH on public health issues or urgent response situations. She states that, "while Dave routinely speaks to fish contaminant issues on behalf of the office and the agency, he has not been delegated as a spokesperson *per se* for the office and agency for other toxicological issues or for urgent response situations." She also indicates that Mr. McBride does not act as spokesperson for other toxicologists in the toxicology group.

Finally, with regard to articulating broad public health issues, she states that Mr. McBride, "...has a lengthy history with the agency and has worked on many toxicological issues including fish contaminants/consumption rates." She states that, "...during my tenure, he has predominately been a spokesperson for the Fish Advisory Program and other assigned toxicological issues, as opposed to a spokesperson *per se* for the agency, articulating broad public health/toxicological issues."

Summary of Mr. McBride's Perspective

Mr. McBride asserts his position should be reallocated from the Tox 2 class to the senior-level Tox 3 class based on the scope, complexity and level of work he is required to perform. Mr. McBride asserts his knowledge and education, job experience and expertise as a Toxicologist at DOH is equal to or greater than his peers who are Toxicologist 3's working in other state

agencies.

Mr. McBride asserts he works as a senior level toxicologist at DOH by working as the principle investigator for human health toxicological assessments; serving as the lead toxicologist for DOH's Fish Advisory Program; providing technical assistance to lower level toxicologists within the agency; testifying before the state legislature on toxicological issues such as mercury; representing the agency at numerous public meetings, national workgroups and committees; planning and participating in large health assessment studies; and performing other duties as a senior-level toxicologist.

Mr. McBride asserts the descriptions for the Tox 2 and 3 classes are nearly identical with the primary difference being that Tox 3 positions are required to be "designated by management" as senior-level positions. Mr. McBride asserts the "designation by management" clause is arbitrary and conflicts with management goals of promoting employee growth and career development. Mr. McBride asserts this is an equity issue with other science-related positions within DOH and other state agencies.

In total, Mr. McBride asserts his position should be reallocated to the Tox 3 class.

Summary of DOH's Reasoning

DOH asserts that Mr. McBride's position has not been designated by management as a senior level toxicologist as required at the Tox 3 level. DOH contends that Mr. McBride has not been delegated by the agency as a principle investigator for a broader scope of human health toxicological assessments as required at the Tox 3 level.

DOH asserts Mr. McBride is the lead toxicologist for the Fish Advisory Program. DOH acknowledges Mr. McBride's expertise in this area is recognized nationally and he has participated in a number of state, regional and national workgroups. DOH acknowledges that in his capacity as a fish contamination specialist/lead, he represents the agency on related state and national workgroups and committees. However, DOH contends a majority of his work is focused on contaminants in fish and shellfish, and the amount of time spent on non-fish related topics is minor. DOH acknowledges that his position does at times address other toxicological issues or projects, and he may communicate results to a wide variety of internal and external stakeholders, develop prevention messaging and make strategic or policy recommendations to upper management. However, DOH contends his primary responsibility is more narrowly focused on the Fish Advisory Program. Additionally, DOH asserts Mr. McBride has not been delegated as spokesperson for the office and agency for other toxicological issues or for urgent response situations.

In total, DOH asserts Mr. McBride's position is properly allocated to the Toxicologist 2 class.

Comparison of Duties to Class Specifications

When comparing the assignment of work and level of responsibility to the available class specifications, the class series concept (if one exists) followed by definition and distinguishing characteristics are primary considerations. While examples of typical work identified in a class specification do not form the basis for an allocation, they lend support to the work envisioned within a classification.

Comparison of Duties to Toxicologist 3

The Definition for the Toxicologist 3 class states:

Evaluates research studies and other technical information related to experimental and regulatory toxicology, toxicokinetics, environmental fate, and environmental transport to determine potential adverse health and/or ecological effects of exposure to environmental chemicals.

The Definition for the Toxicologist 2 and 3 classes are identical. Therefore, one must look to the Distinguishing Characteristics to determine qualifying differences between the two classes.

The Distinguishing Characteristics for this class state:

The Toxicologist 3 is distinguished from the Toxicologist 2 by serving as a senior toxicologist as designated by management. Provides technical assistance to lower level toxicologists on public health issues which are non-routine or which are based on inconclusive data. Represents the office to multi-agency taskforces, legislative hearing, public interest groups, and the press. Evaluates toxicology research literature for relevance to program needs. [Emphasis added]

Mr. McBride's position does not fully meet the requirements of the Distinguishing Characteristics of the Toxicologist 3 class. While portions of his duties reaches aspects of the requirements of this class, his position has not been designated as a senior-level toxicologist by management as required.

Ms. Napolilli acknowledged that Mr. McBride's expertise is recognized in his capacity as the fish contamination technical specialist/lead for the Fish Advisory Program, and that he has represented the OHEST and the agency on various state and national multi-agency taskforces, workgroups and committees regarding fish consumption rates and other related issues. However, Mr. McBride's position does not fully meet the intent of this class of having a larger scope of responsibility for representing OHEST as a whole to multi-agency taskforces, legislative hearings, public interest groups, and the press on a broad scope of public health/toxicological issues as intended.

Ms. Napolilli acknowledged, and Mr. McBride clarified during the review conference, that upon request, he provides technical assistance and acts as a resource to lower level toxicologists regarding fish contamination issues when various health assessments are conducted by agency toxicologists across the state. However, the scope of this responsibility is primarily limited to fish contamination issues and is a relatively minor portion of his duties.

Mr. McBride stated during the review conference that he evaluates toxicology research literature for relevance to the Fish Advisory Program's needs.

Therefore, while Mr. McBride's position reaches aspects of the Distinguishing Characteristics of this class of performing senior level tasks regarding the Fish Advisory Program, the primary focus of his position and the majority of his duties as a whole are focused on the Fish Advisory Program. As stated in her written comments and confirmed during the telephone conference, Ms. Napolilli stated that Mr. McBride has not been delegated by the agency to serve as a principal investigator for human health toxicological assessments and represent the office as a whole.

Additionally, although the typical work examples do not form the basis for an allocation, they lend support to the work envisioned within a classification. The following provides an example of the level of work assigned to the Toxicologist 3 class, as stated in the class specification:

Raises issues of public health import independently and as spokesperson for toxicology group as requested, to supervisor and to DOH management;

Articulates broad public health/toxicological issues on behalf of the Office and DOH and acts as spokesperson in interaction with other offices, agencies the public and the press;

Routinely prepares training materials on toxicological and public health topics, conducts workshops and seminars or lectures for peers, local public health departments, other agencies and the public;

Actively articulates Office and DOH interests to advisory committees, interagency meetings and workgroups, and legislative bodies at county, state and federal level;

Serves as on-call spokesperson for public health issues for Office and DOH routinely and in exigency response situations;

Routinely provides technical leadership and oversight to team efforts involving complex public health/toxicological assessments.

Conducts independently or is principal toxicologist for assessments involving development of major science policy.

Mr. McBride does not act as a spokesperson for other toxicologists with regarding to interacting with other offices, agencies, the public and the press across a broader scope of toxicological issues. Mr. McBride's focus is on the Fish Advisory Program, he does not have responsibility for articulating broad public health/toxicological issues on behalf of the Office and DOH. He does not independently raise important public health issues and act as a spokesperson for the Office's toxicology group.

He does not routinely prepare training materials on toxicological and public health topics, conduct workshops and seminars or lectures for peers, local public health departments, other agencies and the public.

He does not regularly articulate Office and DOH interests to advisory committees, interagency meetings and workgroups, and legislative bodies at county, state and federal level beyond issues primarily related to the Fish Advisory Program, although Ms. Napolilli stated that Mr. McBride is sometimes requested to address other toxicological issues or projects which include communicating results and developing prevention messaging or recommendations to a wide variety of internal and external stakeholders.

Mr. McBride does not regularly serve as the on-call spokesperson for public health issues for Office and DOH routinely and in exigency response situations. This responsibility rests with another person on staff.

Mr. McBride's work is predominately focused on the one person Fish Advisory Program. He does not routinely provide technical leadership and oversight to team efforts involving complex public health/toxicological assessments.

Mr. McBride clarified during the review conference that he uses his expertise and experience to independently serve as the principal toxicologist for assessments involving development of major science policy for fish contamination issues for the Office and DOH.

In total, Mr. McBride spends the majority of his time serving as the principal investigator and lead toxicologist for the one person Fish Advisory Program. In his capacity as a fish contamination technical specialist/lead, Mr. McBride represents the Office and the agency on state and national workgroups and committees focused on the interpretation of technical findings and the development of public health policies. However, Mr. McBride is performing Tox 2 level duties the majority of the time and is appropriately classified as a Tox 2.

Based on the totality of information presented, the overall focus and majority of duties performed by Mr. McBride in his position do not meet the requirements of the Tox 3 class, and his position should not be reallocated to that class.

Comparison of Duties to Toxicologist 2

The Definition for this class states:

Evaluates research studies and other technical information related to experimental and regulatory toxicology, toxicokinetics, environmental fate, and environmental transport to determine potential adverse health and/or ecological effects of exposure to environmental chemicals.

The Distinguishing Characteristics for this class states:

The Toxicologist 2 is distinguished from the Toxicologist 1 by serving as the technical specialist/lead on projects, providing leadership and direction on non-routine public health issues. Represents the department to one or more of the following: multi-agency taskforces, legislative hearings, public interest groups, and the press and makes presentations to the public, peers, and managers. Positions perform duties independently.

The Tox 2 class more accurately describes the primary focus and overall level of responsibility assigned to Mr. McBride's position.

As a whole, Mr. McBride's level of responsibility is consistent with this class. Mr. McBride serves as the technical specialist toxicologist for the Fish Advisory Program. The majority of Mr. McBride's work is focused on toxicological issues related to contaminants in fish and shellfish. Mr. McBride is nationally recognized for his work in fish contamination issues. He participates in a number of state, regional and national workgroups and represents the Office and the agency while participating in those workgroups and committees. Although he does occasionally work on other toxicological issues or projects such as methamphetamine, per chlorate, copper and contaminated sediments, the primary thrust of his position and the majority of his duties as a whole are focused on the Fish Advisory Program. His position is responsible for independently gathering data and information, conducting health risk assessments related to fish contamination, and providing and presenting toxicological and health risk information and results to a wide variety of internal and external stakeholders, agency management, and others. He develops prevention messaging and makes recommendations to upper management.

A position's allocation is not a reflection of performance or an individual's ability to perform higher-level work. Rather, it is based on the majority of work assigned to a position and how that work best aligns with the available job classifications. Based on the level and scope of the overall duties and responsibilities assigned to Mr. McBride's position, the Tox 2 classification is the best fit.

When determining the appropriate classification for a specific position, the duties and responsibilities of that position must be considered in their entirety and the position must be allocated to the classification that provides the best fit overall for the majority of the position's duties and responsibilities. Dudley v. Dept. of Labor and Industries, PRB Case No. R-ALLO-07-007 (2007).

In Byrnes v. Dept. of Corrections, PRB No. R-ALLO-06-005 (2006), the Board held that "[w]hile a comparison of one position to another similar position may be useful in gaining a better understanding of the duties performed by and the level of responsibility assigned to an incumbent, allocation of a position must be based on the overall duties and responsibilities assigned to an individual position compared to the existing classifications. The allocation or misallocation of a similar position is not a determining factor in the appropriate allocation of a position." Citing to Flahaut v. Dept's of Personnel and Labor and Industries, PAB No. ALLO 96-0009 (1996).

Further, positions are to be allocated to the class which best describes the majority of the work assignment. Ramos v DOP, PAB Case No. A85-18 (1985).

In this case, the majority of the duties assigned to Mr. McBride's position and his level of responsibility are best described by the Tox 2 classification. Mr. McBride's position should remain allocated to that class.

Appeal Rights

RCW 41.06.170 governs the right to appeal. RCW 41.06.170(4) provides, in relevant part, the following:

An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to . . . the Washington personnel resources board Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

The mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located at 521 Capitol Way South, Olympia, Washington. The main telephone number is (360) 664-0388, and the fax number is (360) 586-4694.

If no further action is taken, the Director's determination becomes final.

c: David McBride
 Lou Owen, DOH
 Lisa Skriletz, OSHRD

Enclosure: List of Exhibits

David McBride v DOH

List of Exhibits

A. David McBride Exhibits

1. Request form for Director's Review for David McBride, received January 6, 2012
2. Appeal supporting rationale from David McBride with exhibit list
3. Position Review Request for David McBride received November 23, 2011
4. Supervisor Portion of the Position Review Request for David McBride completed by Nona Mallicoat, dated November 23, 2011
5. DOH allocation determination letter from Lou Owen to David McBride dated December 8, 2011
6. DOP Toxicologist 2 classification specification
7. DOP Toxicologist 3 classification specification
8. Position Description form for David McBride's position dated April 2010 with no signatures
9. Position Description form for David McBride's position received by DOH August 10, 2010
10. Copy of a Toxicologist 3 Position Description for DOH
11. Performance and Development Assessment for David McBride for the period Nov. 2010 to Oct. 2011
12. Two November 2011 incident reports
13. Toxicologist 3 Performance Criteria questionnaire form used to assess qualifications of OEHA toxicologists (not a formal DOH document)
14. Toxicologist 3 Performance Criteria questionnaire for David McBride April 30, 2008
15. Toxicologist 3 Performance Criteria questionnaire for David McBride October 24, 2011
16. DOH EHLT Management Goal outline
17. David McBride response to DOH exhibits dated March 8, 2012
18. DOP Glossary of classification terms
19. Cover email from Dan Alexanian with attached EPA Quarterly Report

B. DOH Exhibits

Cover letter from Lou Owen to Karen Wilcox submitting the following exhibits:

1. Position Review Request form for David McBride received November 23, 2011 by DOH

2. Supervisor Portion of the Position Review Request for David McBride completed by Nona Mallicoat, dated November 23, 2011
3. DOH Allocation determination letter from Lou Owen to David McBride, dated December 8, 2011
4. DOP Toxicologist 3 class specification (303G)
5. DOP Toxicologist 2 class specification (303F)
6. Position Description Form for David McBride's position received August 10, 2010
7. Environmental Health Safety and Toxicology Organizational Chart dated August 2011